

RICHARD SCOTT ZIRT, ESQ.
7 St. John Street - Suite 101
P.O. Box 1315
Monticello, NY 12701
(845-794-5928
richardzirt@gmail.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Daniel Berry & Tisha Runyan,

Chapter 13

Case No.: 20-35905(cgm)

Debtors.

-----X

**NOTICE OF MOTION FOR AN ORDER AUTHORIZING DEBTORS' SALE OF
DEBTORS' RESIDENCE PURSUANT TO 11 U.S.C. §363(b)(1) WITH POINTS OF LAW**

S I R S :

PLEASE TAKE NOTICE, that upon the annexed motion of DANIEL BERRY & TISHA RUNYAN, (the "debtor"), by their attorneys, Richard Scott Zirt, Esq., dated January 10, 2022, the undersigned will move before United States Bankruptcy Court, Southern District of New York, located at 355 Main Street, Poughkeepsie, New York, 12601, via Videoconference, on **January 25, 2022 at 9:00a.m.**, or as soon thereafter as counsel can be heard, for an Order authorizing the debtor to sell their right, title, and interest in and to the real property located at 23 Stangel Drive, Woodbourne, Sullivan County, NY 12788.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Motion must be in writing, filed with the Bankruptcy Court, with a copy to the Chambers of the Honorable Cecelia G. Morris, and served upon Richard Scott Zirt, Esq., so as to be received by the undersigned and filed with the Court at least three (3) business days prior to the aforementioned hearing date.

Dated: Monticello, New York
January 10, 2022

LAW OFFICE OF RICHARD SCOTT ZIRT
Attorney for the Debtors

By: /s/ Richard Scott Zirt, Esq.
Law Offices Of Richard Scott Zirt
7 St. John Street - Suite 101
P.O. Box 1315
Monticello, NY 12701
(845) 794-5928
richardzirt@gmail.com

TO:

Krista Preuss, Trustee
399 Knollwood Road, Suite 102
White Plains, NY 10603

ALL CREDITORS AND PARTIES IN INTEREST

RICHARD SCOTT ZIRT, ESQ.
7 St. John Street - Suite 101
P.O. Box 1315
Monticello, NY 12701
(845-794-5928
richardzirt@gmail.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Daniel Berry & Tisha Runyan,

Chapter 13

Case No.: 20-35905(cgm)

Debtors.

-----X

**AFFIRMATION IN SUPPORT OF MOTION FOR AN ORDER
AUTHORIZING DEBTORS' SALE OF HOME
PURSUANT TO 11 U.S.C. §363(b)(1) WITH POINTS OF LAW**

**TO THE HONORABLE CECELIA G. MORRIS,
CHIEF U. S. BANKRUPTCY JUDGE:**

The motion of Daniel Berry and Tisha Runyan (the "Debtors"), by their attorney, Richard Scott Zirt, Esq. respectfully represents as follows:

1. On August 28, 2020, the Debtors filed a petition under Chapter 13 of the United States Bankruptcy Code.
2. The bankruptcy petition and schedules indicate that, at the time of the filing, the Debtors resided at and owned a residence located at 23 Stagnel Drive, Woodbourne, Sullivan County, NY 12788.
2. Said residence was and is encumbered by a first mortgage, held by Planet Home Lending, LLC, in the approximate amount of \$122,016.00 at the time of filing. Said mortgage was in arrears at the time of filing which arrears are being repaid through the confirmed Chapter 13 plan.
3. The value of the residence at the time of filing was appraised to be ONE HUNDRED THOUSAND and XX/100 (\$100,000.00) DOLLARS.
4. Due to the tremendous and unforeseen appreciation in value of the residence since the onset of the COVID-19 pandemic, the Debtors have decided to sell their interest in the home in an effort to lower their monthly living expenses and to capitalize on this substantial COVID-19 increase in Sullivan County home values while they last.

5. On October 29, 2021, the debtor entered into an Agreement with Moshe Schwartz of Brooklyn, NY (the “Buyers”) to sell their residence for a purchase price of for the sum of TWO HUNDRED THIRTY THOUSAND AND XX/100 (\$230,000.00) Dollars. Annexed hereto as **Exhibit “A”** is a copy of the Contract Of Sale.
6. Zachary D. Kelson, Esq. has already been approved by this Court to serve as the attorney for the Debtors in connection with this sale. Hershel Mittleman has already been approved by this Court as the Real Estate Broker for the Debtor. The down-payment upon the contract has already been received from the buyer’s attorney.
7. The contract of sale is headed towards closing and is expected to close within the next 60 days.
8. The Debtors do not require the residence for an effective reorganization and thus desire to sell same. Debtor Daniel Berry owns a property located in Smallwood, NY to which the Debtors plan to relocate their family. This sale would relieve the Debtor’s family of the future obligation to pay mortgage payments, as well as substantially pay off their Chapter 13 obligations.
9. The current Chapter 13 plan proposes to pay a significantly lower percentage to the unsecured creditors. Subsequent to the proposed sale of the home, the Debtor’s Amended Chapter 13 Plan will pay a significantly increased percentage to the unsecured creditors as a result of the proceeds from this sale (less their unused wildcard exemption amounts to be applied to the sale proceeds), which may possibly pay off the bankruptcy at 100% to the unsecured creditors.
10. The Debtors now make this Motion for an Order from this Court authorizing them to sell their right, title, and interest in and to the real property located at 23 Stangel Drive, Woodbourne, Sullivan County, NY 12788.

ARGUMENT

THE DEBTORS HAVE EXERCISED GOOD BUSINESS JUDGMENT IN SELLING THEIR PROPERTY

Pursuant to Section 363(b)(1), the Debtor may sell property of the bankruptcy estate “not in the ordinary course of business” if the Debtor demonstrates that they have employed good business judgment and the sale of estate property is beneficial to the estate and its creditors. Section 363(b) of the Bankruptcy Code provides:

(b) (1) The trustee, after notice and a hearing, may use, sell, or lease other than in the ordinary course of business, property of the estate 11 U.S.C. 363(b)(1).

In the Second Circuit, a Court addressing the issue of whether a sale out of the ordinary course of business should be approved must apply the following standard:

[T]he application of section 363(b) must be supported by ‘some articulated business justification, other than appeasement of a major creditor and that ‘a judge determining a §363(b) application [must] expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.’

In re Lionel Corp., 722 F.2d 1063, 1072 (2d Cir. 1983); *see also In re Borders Group, Inc.*, 2011 WL 1795604 (Bankr.S.D.N.Y. 2011).

In the instant case, the sale of the Debtors’ property maximizes the benefit to the bankruptcy estate by releasing the debtors from their financial obligation to continue to pay monthly mortgage payments, as this sale will enable the Debtors to pay their outstanding mortgage in full, and to pay the plan in full. Thus, the debtor has exercised good business judgment in making the sale and maximizing the benefit to the estate’s creditors.

Accordingly, this Court should approve the sale of the residence by the Debtors under Section 363(b)(1) of the United States Bankruptcy Code.

WHEREFORE, the Debtors respectfully request the entry of an Order authorizing the Debtors to sell their right, title, and interest in and to their residential real property located at 23 Stangel Drive, Woodbourne, Sullivan County, NY 12788; and for such other and further relief as to the Court may seem just and proper.

Dated: Monticello, New York
January 10, 2022

LAW OFFICE OF RICHARD SCOTT ZIRT
Attorney for the Debtors

By: /s/ Richard Scott Zirt, Esq.
Law Offices Of Richard Scott Zirt
7 St. John Street - Suite 101
P.O. Box 1315
Monticello, NY 12701
(845) 794-5928
richardzirt@gmail.com